

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, <i>et al., ex rel.</i> , LAUREN KIEFF,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 03-12366-DPW
WYETH,	)	
	)	
Defendant.	)	
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UNITED STATES OF AMERICA, <i>et al., ex rel.</i> , WILLIAM LACORTE,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil Action. No. 06-11724-DPW
WYETH,	)	
	)	
Defendant.	)	
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**MULTI-STATE COMPLAINT IN INTERVENTION**

**PREAMBLE**

This is an action brought by the State of Colorado, the State of Kansas, the Commonwealth of Kentucky, the State of Maine, the State of Maryland, the State of Minnesota, the State of Nebraska, the State of New Jersey, the State of North Carolina, the State of Oregon, the State of Rhode Island, the State of South Carolina, the State of South Dakota, the State of Utah, the State of Vermont, the State of Washington, and the State of Wyoming (collectively “Intervening States”) against defendant Wyeth for knowingly reporting false and fraudulent

prices to the Intervening States' respective Medicaid programs for Wyeth's two types of acid suppressant drugs, Protonix tablets ("Protonix Oral") and intravenous Protonix ("Protonix IV").

Medicaid is a program funded jointly through a combination of federal-state monies, and which is administered by the states. The Medicaid program provides health care benefits, including, but not limited to, prescription drug coverage, for certain groups, including the elderly, the poor and the disabled. The federal statutes governing Medicaid set forth the minimum requirements for state Medicaid programs to qualify for federal funding. 42 U.S.C. § 1396a. The federal share of each state's Medicaid payments, known as the Federal Medical Assistance Percentage ("FMAP"), is based on the state's per capita income compared to the national average. 42 U.S.C. §1396d(b). State Medicaid programs pay the balance, which is referred to as the "State Share." The State Share for each of the Intervening States during the relevant time period ranged from 25% to as high as 50%.

Congress created the Medicaid Drug Rebate Program ("MDRP") to ensure that the Medicaid program – and thus the federal government and the states -- would receive the benefit of the same discounts and prices on drugs that other large public and private purchasers enjoy. To achieve this objective, Congress required that, in order for a manufacturer's covered outpatient drugs to be eligible for federal payment under Medicaid, the manufacturer must, among other things, report to the Secretary of Health and Human Services ("Secretary") on a quarterly basis the Average Manufacturer Price ("AMP") and "Best Price" for certain drugs. Based on the manufacturer's reported AMP and Best Price, the Secretary, through the Center for Medicare & Medicaid Services ("CMS"), then uses these figures to calculate a unit rebate amount ("URA"), which each state uses to invoice manufacturers for rebates based on the state's utilization of the drug. Congress intended that, through these rebates, the federal and state

governments would receive the benefit of the lowest price – the Best Price – that the manufacturer had offered for brand name drugs.

The drugs at issue in this case – Protonix Oral and Protonix IV -- are known as “proton pump inhibitors” (“PPIs”). When Protonix was initially approved by the Food and Drug Administration, it faced competition from several PPIs which were already on the market. Consequently, Wyeth’s Protonix marketing scheme was designed to penetrate the PPI market by providing deep discounts to hospitals that would then be financially incentivized to place patients on Protonix. Since PPIs are for the treatment of chronic conditions, a patient who is placed on a particular manufacturer’s PPI is an important and ongoing revenue source for the drug company, potentially for the remainder of the patient’s life. Thus, capturing new patients through the hospital market was important to Wyeth, not because Wyeth would make a profit while the patient was in the hospital (the deep discounts precluded any significant profit via hospital sales), but because when the patient left the hospital, Medicaid would not get the discount that the hospital enjoyed. Instead, Medicaid would pay the retail price, potentially for years to come. In the pharmaceutical industry, this type of profiteering is known as a “pull-through” or “spillover” strategy.

The deep discounts described above were provided via “nominal pricing” arrangements in contracts known as Protonix Performance Agreements entered into by Wyeth with hospitals across the country and which: 1) placed commercial conditions -- such as formulary placement and/or market share – on the provision of nominal prices, and 2) constituted “bundled” discounts and contingent nominal pricing arrangements within the meaning of the MDRP.

The Intervening States, as participants in the MDRP pay a percentage of the coverage for prescription drugs, including Protonix Oral and Protonix IV, and were directly affected by

Wyeth's false and inflated Best Price(s). Therefore, the Intervening States have an interest in the pending litigation to recover the amount of rebates which should have been paid by Wyeth to the respective state Medicaid programs of the Intervening States.

### **Jurisdiction and Venue**

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1345, 1367(a), and under 31 U.S.C. § 3732(b). The Court may exercise personal jurisdiction over Wyeth under 31 U.S.C. § 3732(a), because Wyeth transacts business in this District. Venue is proper in this District under 31 U.S.C. § 3732 and 28 U.S.C. § 1391(b) and (c) because Wyeth transacts business in this District.

### **The Parties**

2. The Intervening States, through the authorized actions of their Attorneys General<sup>1</sup>, bring this action on behalf of their respective Medicaid programs, agencies, and their respective state interests.

3. Relator Lauren Kieff is a resident of Massachusetts.

4. Relator William LaCorte is a resident of Louisiana.

5. Plaintiff United States on behalf of its agency, the Department of Health and Human Services, which includes the Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration.

6. Plaintiff States on behalf of their respective Medicaid Programs, agencies and their respective state interests.

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<sup>1</sup> The Intervening States have standing to bring this action pursuant to the doctrine of *Parens Patriae*, as recognized in the case of *Alfred L. Snapp & Son, Inc., et al v. Puerto Rico, ex rel., Pedro Barez, Secretary of Labor and Human Resources*, 458 U.S. 592, 102 S.Ct. 3260, and other applicable law.

7. Defendant Wyeth is a Delaware corporation with its headquarters at 5 Giralda Farms, Madison, New Jersey 07940. Wyeth, formerly known as American Home Products, Inc., is the parent of Wyeth Laboratories, Inc., and Wyeth Pharmaceuticals, Inc., formerly known as Wyeth-Ayerst Laboratories, Inc. The management, supervision, control, reporting, and financial exchanges by and between Wyeth, Wyeth Pharmaceuticals, Inc., and Wyeth Laboratories, Inc., have been so inextricably intertwined that in effect they have operated as one single entity. They acted in concert together to foster, facilitate, and promote the unlawful conduct alleged more specifically below. In or around October 2009, Wyeth was acquired by another pharmaceutical company, Pfizer.

#### **CLAIMS OF THE STATES IN INTERVENTION**

8. The allegations set forth in the Amended Complaint of the States and the District of Columbia, paragraphs 6 through 65, are incorporated by reference and realleged as if fully set forth herein. (Docket No. 126 in Case No.03-12366; Docket No. 115 in Case No. 06-11724.) The Intervening States are similarly situated and affected in the same way by the conduct of defendant Wyeth as the Plaintiff States and seek to join this action to recover their State Share of the Medicaid rebate amounts owed to them by Wyeth as a result of Wyeth's false reporting of Best Prices for Protonix Oral and Protonix IV.

#### **CLAIMS OF THE STATE OF COLORADO IN INTERVENTION**

##### **COUNT 1.**

##### **State of Colorado**

##### **COLORADO FALSE MEDICAID CLAIMS**

##### ***C.R.S. § 25.5-4-304, et seq.***

9. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

10. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Wyeth intentionally or recklessly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State of Colorado or political subdivision thereof.

11. The Colorado Medicaid Program, unaware of the falsity or fraudulent nature of the claims caused by Wyeth, paid for claims that otherwise would not have been allowed.

12. Wyeth was aware of its obligation under the MDRP, 42 U.S.C. § 1396r-8, to make or use truthful records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

13. Wyeth also knew that its submissions to CMS would be used by the United States and the State of Colorado to determine the amount of the rebate that it was obligated to pay to the Colorado Medicaid Program for each drug.

14. Wyeth intentionally or recklessly made, or used or caused to be made or used, false records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV in order to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Colorado Medicaid Program. Said program is jointly funded by the United States and the State of Colorado. By engaging in the conduct outlined above, Defendant Wyeth caused significant financial loss to the United States and the State of Colorado.

WHEREFORE, the State of Colorado, respectfully requests this Court to enter judgment for the State of Colorado and against defendant Wyeth for full restitution in the amount of all medical assistance found by the Court to have been received or retained by Wyeth because of the violation of C.R.S. 25.5-4-304, et seq., and additionally, an amount between five thousand

dollars (\$5,000) and fifty thousand dollars (\$50,000) for each act of submitting false statements of Best Prices by Wyeth or two times the amount of damages sustained by the State of Colorado.

**COUNT 2.**  
**State of Colorado**  
**COMMON LAW FRAUD**

15. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

16. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth made and/or caused to be made fraudulent statements to the State of Colorado of its lowest or Best Prices on each type of formulation of Protonix Oral and Protonix IV.

17. Defendant Wyeth made and/or caused to be made fraudulent material misrepresentations to the State of Colorado and the United States regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV, failing to disclose material facts that it had a duty to disclose, with actual knowledge of the false and fraudulent nature of those misrepresentations and/or with reckless disregard for their truth.

18. Defendant Wyeth intended that the State of Colorado rely upon these material misrepresentations.

19. The State of Colorado did, in fact rely upon Wyeth's fraudulent misrepresentations. As a result, for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Colorado received substantially smaller rebate payments than it would have otherwise been entitled to receive if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

WHEREFORE, the State of Colorado, respectfully requests this Court to enter judgment for the State of Colorado and against defendant Wyeth, and impose damages in an amount equivalent to the loss sustained by the State of Colorado Medicaid Program, plus pre-judgment interest.

**COUNT 3.**  
**State of Colorado**  
**BREACH OF CONTRACT**

20. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

21. As discussed above, Wyeth entered into a rebate contract with the United States. The State of Colorado was an intended third party beneficiary of that contract. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

22. From the second quarter of 2001 continuing through the fourth quarter of 2006, Defendant Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

23. By virtue of this conduct, Wyeth is liable to the State of Colorado for damages and any other relief the Court deems appropriate.

WHEREFORE, the State of Colorado, respectfully requests this Court to enter judgment for the State of Colorado and against defendant Wyeth, and impose damages in an amount equivalent to the loss sustained by the State of Colorado Medicaid Program, plus pre-judgment interest.



**COUNT 4.**  
**State of Colorado**  
**UNJUST ENRICHMENT**

24. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

25. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

26. The State of Colorado Medicaid Program received substantially smaller Medicaid rebates than they would have received had Wyeth truthfully reported its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

27. If Wyeth had not falsely inflated its Best Prices, Wyeth would have been required to pay substantially larger rebates to the State of Colorado.

28. By retaining monies that were actually owed to the State of Colorado under the Medicaid Rebate Program, Wyeth retained money that is the property of the State of Colorado to which it was not entitled.

29. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Colorado, pursuant to the MDRP, absent Wyeth's false and fraudulent misrepresentations regarding the Best Prices on each type or formulation of Protonix Oral and Protonix IV.

WHEREFORE, the State of Colorado respectfully requests this Court to enter judgment for the State of Colorado and against defendant Wyeth, and impose damages in an amount equivalent to the loss sustained by the State of Colorado Medicaid Program, plus pre-judgment interest.

WHEREFORE, the State of Colorado prays:

a. That judgment be entered in favor of the State of Colorado and against Defendant, Wyeth.

b. On State of Colorado's False Claims Act claims, as outlined in Count 1; full restitution to State of Colorado Medicaid Program, and additionally an amount between \$5,000 and \$50,000 for each act of submitting false statements of Best Prices by Wyeth on each type or formulation of Protonix Oral and Protonix IV or two times the amount of damages sustained by the State of Colorado.

c. On State of Colorado's Common Law Fraud claim, as outlined in Count 2; impose damages in an amount equivalent to the loss sustained by the State of Colorado Medicaid Program, plus prejudgment interest.

d. On State of Colorado's Breach of Contract claim, as outlined in Count 3; impose damages in an amount equivalent to the loss sustained by the State of Colorado Medicaid Program and any other relief deemed appropriate.

e. On State of Colorado's Unjust Enrichment claim, as outlined in Count 4; recovery in the amount of the State of Colorado's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus prejudgment interest.

f. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF KANSAS IN INTERVENTION**

**COUNT 5.**

**State of Kansas**

**KANSAS FALSE CLAIMS ACT**

**K.S.A. 75-7503(a)(2)**

30. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

31. K.S.A. 75-7503(a)(2), the Kansas False Claims Act, provides, in pertinent part, that:

a. A person who commits any of the following acts shall be liable to the state or any affected political subdivision thereof, for three times the amount of damages which the state or such political subdivision sustains because of the act of that person and shall be liable to the state for a civil penalty of not less than \$1,000 and not more than \$11,000 for each violation. A person found to have committed any of the following acts shall be liable to the state or such other affected political subdivision for all reasonable costs and attorney fees incurred in a civil action brought to recover any of those penalties or damages. The following acts constitute violations for which civil penalties, costs and attorneys fees may be recovered by a civil action under this act:

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(2) knowingly makes, uses or causes to made or used, a false record or statement to get a false or fraudulent claim paid or approved;...

32. According to K.S.A. 75-7502(d), “person” is defined under the Kansas False Claims Act as “any natural person, corporation, firm, association, organization, partnership, business or trust.”

33. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth knowingly caused to be made or used false records or statements to get false claims paid or approved.

34. Specifically, Wyeth knowingly made, or used, or caused to made or used, false quarterly records or statements to CMS of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

35. As a result of the false quarterly records or statements, Wyeth substantially underpaid its rebate obligations to the State of Kansas under the MDRP.

36. By virtue of the false records or statements that Wyeth knowingly made, used or caused to be made or used, Wyeth is liable to the State of Kansas for civil penalties between \$1,000 and \$11,000 for each violation of the Kansas False Claims Act, for three (3) times the amount of damages which the State of Kansas sustained as a result of the acts of Wyeth, and for costs and fees incurred as a result of this action. *See* K.S.A. 75-7501(a).

**COUNT 6.**  
**State of Kansas**  
**KANSAS FALSE CLAIMS ACT**  
**K.S.A. 75-7503(a)(3)**

37. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

38. K.S.A. 75-7503(a)(3), the Kansas False Claims Act, provides, in pertinent part, that:

a. A person who commits any of the following acts shall be liable to the state or any affected political subdivision thereof, for three times the amount of damages which the state or such political subdivision sustains because of the act of that person and shall be liable to the state for a civil penalty of not less than \$1,000 and not more than \$11,000 for each violation. A person found to have committed any of the following acts shall be liable to the state or such other affected political subdivision for all reasonable costs and attorney fees incurred in a civil action brought to recover any of those penalties or damages. The following acts constitute violations for which civil penalties, costs and attorneys fees may be recovered by a civil action under this act:

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- (3) defrauds the state or any political subdivision thereof by getting a false claim allowed or paid or by knowingly making, using or causing to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state or to any political subdivision thereof;...

39. According to K.S.A. 75-7502(d), “person” is defined under the Kansas False Claims Act as “any natural person, corporation, firm, association, organization, partnership, business or trust.”

40. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth knowingly caused to be made or used false records or statements to get false claims paid or approved.

41. Wyeth knowingly made, or used, or caused to be made or used, false quarterly records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV in order to conceal, avoid or decrease an obligation to pay or transmit money or property to the Kansas Medicaid Program. Said program is jointly funded by the United States and the State of Kansas. By engaging in the conduct outlined above, Wyeth caused significant financial loss to the State of Kansas.

42. By virtue of the false records or statements that Wyeth knowingly made, used or caused to be made or used, Wyeth is liable to the State of Kansas for civil penalties between \$1,000 and \$11,000 for each violation of the Kansas False Claims Act, for three (3) times the amount of damages which the State of Kansas sustained as a result of the acts of Wyeth, and for costs and fees incurred as a result of this action. *See* K.S.A. 75-7501(a).

**COUNT 7.**  
**State of Kansas**  
**COMMON LAW FRAUD**

43. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

44. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth knowingly made and/or caused to be made fraudulent records or statements to the State of Kansas of its lowest or Best Prices on each type or formulation of Protonix Oral and Protonix IV.

45. Wyeth made and/or caused to be made fraudulent material misrepresentations to the State of Kansas and the United States regarding Best Prices on each type or formulation of Protonix Oral and Protonix IV, failing to disclose material facts that it had a duty to disclose, with actual knowledge of the false and fraudulent nature of those misrepresentations and/or with reckless disregard for the truth.

46. Wyeth intended that the State of Kansas rely upon those material misrepresentations.

47. The State of Kansas did, in fact, rely upon Wyeth's fraudulent misrepresentations. As a result, for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Kansas received substantially smaller rebate payments than it would have otherwise been entitled to receive if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

48. By virtue of this conduct, Wyeth is liable to the State of Kansas for damages in an amount equivalent to the loss sustained by the State of Kansas Medicaid Program, plus pre-judgment interest.

**COUNT 8.**  
**State of Kansas**  
**BREACH OF CONTRACT**

49. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

50. Wyeth entered into a rebate contract with the United States. The State of Kansas was an intended third party beneficiary of the contract. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

51. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

52. By virtue of this conduct, Wyeth is liable to the State of Kansas for damages and any and all other relief deemed appropriate by the Court.

**COUNT 9.**  
**State of Kansas**  
**UNJUST ENRICHMENT**

53. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

54. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

55. The Kansas Medicaid Program received substantially smaller Medicaid rebates than would have been received had Wyeth truthfully reported its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

56. If Wyeth had not falsely inflated its Best Prices, Wyeth would have been required to pay substantially larger rebates to the State of Kansas.

57. By retaining monies that were actually owed to the State of Kansas under the MDRP, Wyeth retained monies that are the property of the State of Kansas to which Wyeth is not entitled.

58. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Kansas, pursuant to the MDRP, absent Wyeth's false and fraudulent misrepresentations regarding the Best Prices on each type or formulation of Protonix Oral and Protonix IV.

59. By virtue of this conduct, Wyeth is liable to the State of Kansas for damages in an amount equivalent to the loss sustained by the Kansas Medicaid Program, plus pre-judgment interest.

**COUNT 10.**  
**State of Kansas**  
**DISGORGEMENT**

60. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

61. From the second quarter of calendar year 2001 and continuing through the fourth quarter of calendar year 2006, Wyeth falsely reported its Best Prices to CMS on each type or formulation of Protonix Oral and Protonix IV resulting in lower rebate payments to the State of Kansas than that which the State of Kansas was entitled to, and permitting Wyeth to retain monies that should have been paid to the State of Kansas.

62. Wyeth failed to comply with its obligations under the MDRP and the rebate contract and retained monies that should have been paid to the State of Kansas.



63. This Court has the equitable power to order Wyeth to disgorge the entire amount of improperly-retained rebate payments that should have been paid to the Kansas Medicaid Program.

64. The State of Kansas seeks disgorgement of all unpaid rebates based upon Wyeth's failure to comply with its obligations under the MDRP and the rebate contract.

WHEREFORE, the State of Kansas prays:

a. That judgment be entered in favor of the State of Kansas and against Defendant, Wyeth.

b. On the State of Kansas's False Claims Act claims, as outlined in Counts 5 and 6; payment of up to three times the amount of damages sustained, civil penalties between \$1,000 and \$11,000 for each violation of the Kansas False Claims Act, and reasonable costs and fees incurred, pursuant to K.S.A. 75-7503.

c. On the State of Kansas's Common Law Fraud claim, as outlined in Count 7; compensatory damages, punitive damages, such amounts to be determined at trial, plus the State of Kansas's costs in this suit, including reasonable attorneys' fees.

d. On the State of Kansas's Breach of Contract claim, as outlined in Count 8; impose damages in an amount equivalent to the loss sustained by the State of Kansas Medicaid Program, plus prejudgment interest.

e. On the State of Kansas's Unjust Enrichment claim, as outlined in Count 9; recovery in the amount of the State of Kansas's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus prejudgment interest.

f. On the State of Kansas's Disgorgement claim, as outlined in Count 10; an amount equivalent to the loss sustained by the State of Kansas, prejudgment interest and punitive damages.

g. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE COMMONWEALTH OF KENTUCKY IN INTERVENTION**

**COUNT 11.  
Commonwealth of Kentucky  
KENTUCKY MEDICAID FRAUD ACT  
KRS 205.8463, 446.070**

65. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

66. KRS 205.8463(4) provides: "No person shall, in any matter within the jurisdiction of the Cabinet for Health Services under this chapter, knowingly falsify, conceal, or cover-up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry."

67. KRS 446.070 provides that: "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

68. Wyeth violated KRS 205.8463(4) by the conduct described herein, including, but not limited to, knowingly marketing Protonix Oral and Protonix IV by "bundling", acknowledging as in its Policy Manual that bundled sales impact the calculation of Best Price, yet submitting Best Price reports on each type or formulation of Protonix Oral and Protonix IV without accounting for the effective prices to hospitals on those drugs. The reported inflated Best Prices resulted in understated URAs, which caused the Commonwealth to understate Wyeth's

rebate liability. Therefore, for each Best Prices report, Wyeth has knowingly falsified information relied upon by the Cabinet for Health Services for calculation of Medicaid rebate payments.

69. As a direct result of Wyeth's violations of KRS 205.8463(4), Wyeth has caused damages to the Commonwealth, including the Kentucky Medicaid Program, by causing the Kentucky Medicaid Program to receive substantially smaller rebate payments than it would have been entitled to receive had Wyeth submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

**COUNT 12.**  
**Commonwealth of Kentucky**  
**KENTUCKY CONSUMER PROTECTION ACT**  
**KRS 367.170**

70. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

71. KRS 367.170 (1) provides: "Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

72. KRS 446.070 provides that: "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

73. By engaging in the conduct described in the Amended Complaint, Wyeth has committed violations of KRS 367.170.

74. As a direct result of Wyeth's violations of KRS 367.170, Wyeth has caused damages to the Commonwealth, including the Kentucky Medicaid Program, by causing the Kentucky Medicaid Program to receive substantially smaller rebate payments than it would have

been entitled to receive had Wyeth submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV .

**COUNT 13.**  
**Commonwealth of Kentucky**  
**COMMON LAW FRAUD**

75. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

76. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the Commonwealth of Kentucky and/or to the United States.

77. Through these knowingly false and material representations, Wyeth intended to induce the Commonwealth of Kentucky to act or refrain from acting.

78. The Commonwealth of Kentucky was deceived by Wyeth's representations and/or omissions and did, in fact, justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the Commonwealth of Kentucky received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

79. By virtue of these actions or failures to act, Wyeth is liable to the Commonwealth of Kentucky for damages and any other relief the Court deems appropriate.

**COUNT 14.**  
**Commonwealth of Kentucky**  
**BREACH OF CONTRACT**

80. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

81. As discussed in the Amended Complaint of the States and the District of Columbia, Wyeth entered into a rebate contract with the United States. The Commonwealth of Kentucky was an intended third party beneficiary of that contract. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

82. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Price on each type or formulation of Protonix Oral and Protonix IV.

83. By virtue of this conduct, Wyeth is liable to the Commonwealth of Kentucky for damages and any other relief this Court deems appropriate

**COUNT 15.**  
**Commonwealth of Kentucky**  
**UNJUST ENRICHMENT**

84. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

85. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

86. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the Commonwealth of Kentucky.

87. By retaining monies that were actually owed to the Commonwealth of Kentucky under the MDRP, Wyeth knowingly retained money that was the property of the Commonwealth of Kentucky and to which Wyeth was not entitled.

88. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the Commonwealth of Kentucky pursuant to MDRP.

89. By virtue of this conduct, Wyeth is liable to the Commonwealth of Kentucky for damages and any other relief the Court deems appropriate.

**COUNT 16.**  
**Commonwealth of Kentucky**  
**DISGORGEMENT**

90. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

91. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

92. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the Commonwealth of Kentucky. By retaining monies that were actually owed to the Commonwealth of Kentucky under the MDRP, Wyeth retained money that was the property of the Commonwealth of Kentucky and to which Wyeth was not entitled.

93. By virtue of this conduct, Wyeth is liable to the Commonwealth of Kentucky and the Commonwealth seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the Commonwealth.

WHEREFORE, the Commonwealth of Kentucky prays:

a. That Judgment be entered in favor of the Commonwealth of Kentucky and against Defendant, Wyeth on all Counts.

b. On the Commonwealth of Kentucky's Medicaid Fraud Act claim, as outlined in Count 11; for compensatory damages, punitive damages pursuant to KRS 411.184, and prejudgment interest and the Commonwealth of Kentucky's costs and reasonable attorney's fees in this suit.

c. On the Commonwealth of Kentucky's Consumer Protection Act claim, as outlined in Count 12; declare that Wyeth committed repeated willful violations of KRS 367.170 and for damages in an amount equivalent to the loss sustained by the Commonwealth of Kentucky Medicaid Program, and penalties pursuant to KRS 367.190 and 367.990, and prejudgment interest and the Commonwealth of Kentucky's costs in this suit.

d. On the Commonwealth of Kentucky's Common Law Fraud claim, as outlined in Count 13; for compensatory damages, punitive damages pursuant to KRS 411.184, such amounts to be determined at trial, and prejudgment interest and the Commonwealth of Kentucky's costs and reasonable attorney's fees in this suit.

e. On the Commonwealth of Kentucky's Breach of Contract claim, as outlined in Count 14; for damages in an amount equivalent to the loss sustained by the

Commonwealth of Kentucky Medicaid Program, and prejudgment interest and Commonwealth of Kentucky's costs and reasonable attorney's fees in this suit.

f. On the Commonwealth of Kentucky's Unjust Enrichment claim, as outlined in Count 15; for recovery in the amount equivalent to the Commonwealth of Kentucky Medicaid funds by which Wyeth was unjustly enriched, including actual damages, and prejudgment interest and the Commonwealth of Kentucky's costs and reasonable attorney's fees in this suit.

g. On the Commonwealth of Kentucky's Disgorgement claim, as outlined in Count 16; for recovery in the amount equivalent to the loss sustained by the Commonwealth of Kentucky, and prejudgment interest and the Commonwealth of Kentucky's costs and reasonable attorney's fees in this suit.

h. For such other and further relief that the Court deems just and necessary.

#### **CLAIMS OF THE STATE OF MAINE IN INTERVENTION**

##### **COUNT 17.**

##### **State of Maine**

##### **FALSE CLAIMS**

##### **Title 22 Maine Revised Statutes § 15**

94. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

95. Title 22 Maine Revised Statutes § 15 provides in pertinent part that:

Any person, firm, association, partnership, corporation or other legal entity who makes or causes to be made or presents or causes to be presented for payment or approval any claim upon or against the [Department of Health and Human Services] or upon any funds administered by the department, knowing such claim to be false, fictitious or fraudulent or who, for the purpose of obtaining or aiding another to obtain the payment or approval of such claim, makes any false written statement or submits any false document that the person does not believe to be true, or who enters into any agreement, combination or conspiracy to



defraud the department by obtaining the payment or approval of any false, fictitious or fraudulent claim, shall, in addition to any criminal liability that may be provided by law, be subject to civil suit . . . .

96. From the second quarter of calendar year 2001 and continuing through the fourth quarter of calendar year 2006, Wyeth made or caused to be made or presented or caused to be presented for payment or approval false, fictitious or fraudulent claims upon or against the Maine Department of Health and Human Services (“Maine DHHS”) or upon funds administered by Maine DHHS, knowing such claims to be false, fictitious or fraudulent, or for the purpose of obtaining or aiding another to obtain the payment or approval of such claims, made false statements or submitted false documents that it did not believe to be true regarding its Best Prices or rebate obligations to the State of Maine or Maine DHHS on each type or formulation of its drugs Protonix Oral and Protonix IV.

97. As a result of Wyeth’s conduct, The State of Maine suffered damages and Wyeth is liable to the State of Maine for restitution, interest, and a civil penalty which is threefold the amount in excess benefits or payments, but in any case not less than \$2,000 for each false claim for assistance, benefits or payments, or for each document submitted in support of such false claim, whichever is greater, costs of the suit, costs of investigation, and attorney’s fees. 22 M.R.S. §15.

**COUNT 18.**  
**State of Maine**  
**COMMON LAW FRAUD**

98. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

99. From the second quarter of calendar year 2001 and continuing through the fourth quarter of calendar year 2006, Wyeth knowingly or with reckless disregard for the truth, made or

caused to be made false representations of material facts, namely its Best Prices or rebate obligations to CMS or the State of Maine on each type or formulation of Protonix Oral and Protonix IV, or omitted material facts that Wyeth had a duty to disclose.

100. Wyeth made or caused the false representations to be made for the purpose of inducing the State of Maine to act in reliance upon them.

101. The State of Maine justifiably relied upon Wyeth's false representations or material omissions regarding Best Prices or rebate obligations on each type or formulation of Protonix Oral and Protonix IV, and as a result the State of Maine was damaged in that it invoiced lower rebate amounts and received from Wyeth smaller rebate payments than it was entitled to receive or paid more for claims related to each type or formulation of Protonix Oral and Protonix IV than it would have paid if Wyeth had made true representations.

102. As a result of its conduct, Wyeth is liable to the State of Maine for damages, costs, interest, and such other relief as the Court deems appropriate.

**COUNT 19.**  
**State of Maine**  
**BREACH OF CONTRACT/3d PARTY BENEFICIARY**

103. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

104. As discussed in the Amended Complaint of the States and the District of Columbia, Wyeth entered into a Rebate Agreement (Rebate Agreement or contract) with the Secretary of the United States Department of Health and Human Services with respect to its prescription drugs, including each type or formulation of Protonix Oral and Protonix IV. (A copy of the Rebate Agreement is attached as Exhibit 20 to the Amended Complaint of the States and the District of Columbia).

105. The State of Maine is an intended third party beneficiary of that contract.

106. Under the terms of that contract, Wyeth had a duty, *inter alia*, to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

107. From the second quarter of calendar year 2001 and continuing through the fourth quarter of calendar year 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

108. The State of Maine suffered damage as a result of Wyeth's breach of that contract.

109. As a result of its conduct, Wyeth is liable to the State of Maine for damages, costs, interest, and such other relief as the Court deems appropriate.

**COUNT 20.**  
**State of Maine**  
**UNJUST ENRICHMENT**

110. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

111. From the second quarter of calendar year 2001 and continuing through the fourth quarter of calendar year 2006, Wyeth falsely reported its Best Prices to CMS or the State of Maine on each type or formulation of Protonix Oral and Protonix IV resulting in lower rebate payments to the State of Maine than that which the State of Maine was entitled to, and permitting Wyeth to retain monies that should have been paid to the State of Maine.

112. Wyeth had appreciation or knowledge that its false Best Prices would result in rebate payments to the State of Maine that were lower than that which the State of Maine was entitled to.

113. Under the circumstances, it would be inequitable for Wyeth to retain the value of the monies that should have been paid to the State of Maine as rebates on each type or formulation of Protonix Oral and Protonix IV.

114. As a result of its conduct, Wyeth is liable to the State of Maine for damages, costs, interest, and such other relief as the Court deems appropriate.

WHEREFORE, the State of Maine respectfully requests that judgment be entered in favor of the State of Maine and against defendant Wyeth on the above Counts, and to impose damages and other relief as follows:

a. Count 17, restitution, interest, a civil penalty which is three times the amount in excess benefits or payments, but in any case an amount not less than \$2,000 for each false claim or for each false document submitted in support of each false claim, whichever is greater, costs of the suit, costs of investigation, attorney's fees, and such other relief as the Court deems appropriate;

b. Count 18, an amount equal to the loss sustained by the State of Maine MaineCare Program, costs, interest, and such other relief as the Court deems appropriate;

c. Count 19, an amount equal to the loss sustained by the State of Maine MaineCare Program, costs, interest, and such other relief as the Court deems appropriate; and

d. Count 20, an amount equal to the loss sustained by the State of Maine MaineCare Program, costs, interest, and such other relief as the Court deems appropriate.

**CLAIMS OF THE STATE OF MARYLAND IN INTERVENTION**

**COUNT 21.  
State of Maryland  
COMMON LAW FRAUD**

115. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

116. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Maryland and/or to the United States.

117. Through these knowingly false and material representations, Wyeth intended to induce the State of Maryland to act or refrain from acting.

118. The State of Maryland did, in fact, justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Maryland received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

119. By virtue of these actions or failures to act, Wyeth is liable to the State of Maryland for damages and any other relief the Court deems appropriate.

**COUNT 22.  
State of Maryland  
BREACH OF CONTRACT**

120. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

121. As discussed herein, Wyeth entered into a rebate contract with the United States. The State of Maryland was an intended third party beneficiary of that contract. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

122. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Price on each type or formulation of Protonix Oral and Protonix IV.

123. By virtue of this conduct, Wyeth is liable to the State of Maryland for damages and any other relief this court deems appropriate.

**COUNT 23.**  
**State of Maryland**  
**UNJUST ENRICHMENT**

124. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

125. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

126. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Maryland.

127. By retaining monies that were actually owed to the State of Maryland under the MDRP, Wyeth retained money that was the property of the State of Maryland and to which Wyeth was not entitled.

128. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Maryland pursuant to MDRP.

129. By virtue of this conduct, Wyeth is liable to the State of Maryland for damages and any other relief the Court deems appropriate.

**COUNT 24.**  
**State of Maryland**  
**DISGORGEMENT**

130. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

131. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

132. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Maryland. By retaining monies that were actually owed to the State of Maryland under the MDRP, Wyeth retained money that was the property of the State of Maryland and to which Wyeth was not entitled.

133. By virtue of this conduct, Wyeth is liable to the State of Maryland and the State seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the State of Maryland.

WHEREFORE, the State of Maryland prays:

a. That judgment be entered in favor of the State of Maryland and against Defendant, Wyeth.

b. On the State of Maryland's Common Law Fraud claim, as outlined in Count 21; compensatory damages, punitive damages, such amounts to be determined at trial, plus the State of Maryland's costs in this suit, including reasonable attorneys' fees.

c. On the State of Maryland's Breach of Contract claim, as outlined in Count 22; impose damages in an amount equivalent to the loss sustained by the State of Maryland Medicaid Program, plus prejudgment interest.

d. On the State of Maryland's Unjust Enrichment claim, as outlined in Count 23; recovery in the amount of the State of Maryland's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of Maryland's costs in this suit, including all reasonable attorney's fees.

e. On the State of Maryland's Disgorgement claim, as outlined in Count 24; an amount equivalent to the loss sustained by the State of Maryland, prejudgment interest and punitive damages.

f. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF MINNESOTA IN INTERVENTION**

**COUNT 25.  
State of Minnesota  
COMMON LAW FRAUD**

134. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

135. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Minnesota and/or to the United States.

136. Through these knowingly false and material representations, Wyeth intended to induce the State of Minnesota to act or refrain from acting.



137. The State of Minnesota did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Minnesota received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

138. By virtue of these actions or failures to act, Wyeth is liable to the State of Minnesota for damages and any other relief the Court deems appropriate.

**COUNT 26.**  
**State of Minnesota**  
**BREACH OF CONTRACT**

139. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

140. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

141. The State of Minnesota was an intended third party beneficiary of that contract.

142. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

143. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Price on each type or formulation of Protonix Oral and Protonix IV.

144. By virtue of this conduct, Wyeth is liable to the State of Minnesota for damages and any other relief this court deems appropriate.

**COUNT 27.**  
**State of Minnesota**  
**UNJUST ENRICHMENT**

145. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

146. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

147. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Minnesota.

148. By retaining monies that were actually owed to the State of Minnesota under the MDRP, Wyeth retained money that was the property of the State of Minnesota and to which Wyeth was not entitled.

149. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Minnesota pursuant to MDRP.

150. By virtue of this conduct, Wyeth is liable to the State of Minnesota for damages and any other relief the Court deems appropriate.

**COUNT 28.**  
**State of Minnesota**  
**DISGORGEMENT**

151. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

152. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

153. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Minnesota.

154. By retaining monies that were actually owed to the State of Minnesota under the MDRP, Wyeth retained money that was the property of the State of Minnesota and to which Wyeth was not entitled.

155. By virtue of this conduct, Wyeth is liable to the State of Minnesota and the State seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the State of Minnesota.

WHEREFORE, the State of Minnesota prays:

a. That judgment be entered in favor of the State of Minnesota and against Defendant, Wyeth.

b. On the State of Minnesota's Common Law Fraud claim, as outlined in Count 25; compensatory damages, punitive damages, such amounts to be determined at trial, plus the State of Minnesota's costs in this suit, including reasonable attorneys' fees.

c. On the State of Minnesota's Breach of Contract claim, as outlined in Count 26; impose damages in an amount equivalent to the loss sustained by the State of Minnesota Medicaid Program, plus prejudgment interest.

d. On the State of Minnesota's Unjust Enrichment claim, as outlined in Count 27; recovery in the amount of the State of Minnesota's payment for the false and

inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of Minnesota's costs in this suit, including all reasonable attorney's fees.

e. On the State of Minnesota's Disgorgement claim, as outlined in Count 28; an amount equivalent to the loss sustained by the State of Minnesota, prejudgment interest and punitive damages.

f. For such other and further relief that the Court deems just and necessary.

### **CLAIMS OF THE STATE OF NEBRASKA IN INTERVENTION**

#### **COUNT 29.**

##### **State of Nebraska**

##### **VIOLATION OF NEBRASKA'S FALSE MEDICAID CLAIMS ACT**

##### ***NEB. REV. STAT. §68-1037.03(2) (1997) and §68-936(1)(b)***

156. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

157. *Neb. Rev. Stat. §68-1037.03(2) (1997)*, which applies to conduct occurring before July 16, 2004, provides, in part, that "[a]ny person that presents, or causes to be presented, to an officer, employee, assignee, or agent of the state [Medicaid] agency a claim under the [M]edicaid program presents a false claim if such person knows or should know . . . [that] [t]he claim is not true or is fraudulent."

158. *Neb. Rev. Stat. §68-1037.02(3) (1997)*, which applies to conduct occurring before July 16, 2004, provides that "[k]nows or should know means that a person, with respect to information: (a) [h]as actual knowledge of the information; (b) [a]cts in deliberate ignorance of the truth or falsity of the information; or (c) [a]cts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

159. *Neb. Rev. Stat. §68-1037.03* (1997), which applies to conduct occurring before July 16, 2004, provides, in part, that “[a]ny person that presents a false claim is subject, in addition to any other remedies that may be prescribed by law, to a civil penalty of not more than five thousand dollars for each false claim. In addition, such person is subject to an award of twice the amount of damages sustained by the state [Medicaid] agency because of such claim.”

160. *Neb. Rev. Stat. §1037.03(3)* (2004) provides that if the state is the prevailing party in an action under the False Medicaid claims Act, the defendant, in addition to penalties and damages, shall pay the state’s costs and attorney’s fees for the civil action brought to recover penalties or damages under the Act.

161. *Neb. Rev. Stat. §68-936(1)(b)*, which applies to conduct occurring on and after July 16, 2004, provides, in pertinent part, that a person presents a false Medicaid claim and is subject to civil liability if such person knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval by the state of a false or fraudulent claim.

162. *Neb. Rev. Stat. §68-935(4)*, which applies to conduct occurring on and after July 16, 2004, defines “knowing” and “knowingly”, for purposes of the False Medicaid Claims Act, to mean “that with respect to information, a person (a) has actual knowledge of such information; (b) acts in deliberate ignorance of the truth or falsity of such information; or (c) acts in reckless disregard of the truth or falsity of such information.”

163. *Neb. Rev. Stat. §68-936(2)* provides that a person who presents a false Medicaid claim under subsection (1) of this section is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, a person who presents a false Medicaid claim under subsection (1) of this section

may be subject to damages in the amount of three times the amount of the false claim submitted to the state due to the act of such person.

164. *Neb. Rev. Stat. §68-936(3)* provides that if the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the Act.

165. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States under which it had a duty to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

166. The State of Nebraska participated in the MDRP under which it received rebates from Wyeth from its purchases of each type or formulation of Protonix Oral and Protonix IV.

167. The Best Prices reported by Wyeth on each type or formulation of Protonix Oral and Protonix IV determined the amount of the rebate Wyeth would have been required to pay to the State of Nebraska under the MDRP.

168. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth knowingly made, used or caused to be made or used false records or statements to get false claims paid or approved. Specifically, for each quarter beginning with the second quarter of 2001, and continuing through the fourth quarter of 2006, Wyeth knowingly submitted false quarterly records or statements to CMS of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

169. This resulted in the State of Nebraska submitting to the federal government false and inflated requests for reimbursement of Medicaid expenditures as well as improperly reducing Wyeth's rebate obligations to the State of Nebraska under the MDRP.

170. At all relevant times, Wyeth, was aware of its obligation under the Rebate Statute, 42 U.S.C. §1396r-8, to make and to use truthful records or statements regarding the Best Prices on each type or formulation of Protonix Oral and Protonix IV. Wyeth also knew that its Best Price submissions would be relied upon and used by the United States and/or the State of Nebraska to calculate the unit rebate amount, which would affect the amount of the rebates that Wyeth was obligated to pay the State of Nebraska on each type or formulation of Protonix Oral and Protonix IV.

171. By virtue of the false records or statements that Wyeth knowingly made, used or caused to be made or used, Wyeth is liable to the State of Nebraska for a civil penalty of up to ten thousand dollars (\$10,000) for each violation of the Nebraska False Medicaid Claims Act, for three times the amount of damages which the State of Nebraska sustained because of the acts of Wyeth, and for the costs and attorney fees incurred in this action.

**COUNT 30.**  
**State of Nebraska**  
**NEBRASKA FALSE MEDICAID CLAIMS ACT**  
***Neb. Rev. Stat. 68-1037.03 (1997) and §68-936(1)(f)***

172. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

173. *Neb. Rev. Stat. §1037.03(1)(f) (1997)* provides that a person presents a false Medicaid claim and is subject to civil liability if such person knowingly makes, uses, or causes to be made or used, a false record or statement with the intent to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state.

174. *Neb. Rev. Stat.* §68-1037.02(3) (1997), which applies to conduct occurring before July 16, 2004, provides that “[k]nows or should know means that a person, with respect to information: (a) [h]as actual knowledge of the information; (b) [a]cts in deliberate ignorance of the truth or falsity of the information; or (c) [a]cts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.”

175. *Neb. Rev. Stat.* §68-1037.03 (2004), which applies to conduct occurring before July 16, 2004, provides, in part, that “[a]ny person that presents a false claim is subject, in addition to any other remedies that may be prescribed by law, to a civil penalty of not more than five thousand dollars for each false claim. In addition, such person is subject to an award of twice the amount of damages sustained by the state [Medicaid] agency because of such claim.”

176. *Neb. Rev. Stat.* §1037.03(3) (2004) provides that if the State of Nebraska is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the State of Nebraska’s costs and attorney’s fees for the civil action brought to recover penalties or damages under the Act.

177. *Neb. Rev. Stat.* §68-936(1)(f), which applies to conduct occurring on and after July 16, 2004, provides, in pertinent part, that a person presents a false Medicaid claim and is subject to civil liability if such person knowingly makes, uses, or causes to be made or used, a false record or statement with the intent to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state.

178. *Neb. Rev. Stat.* §68-935(4) defines “knowing” or “knowingly” as when a person, with respect to information, (a) has actual knowledge of such information; (b) acts in deliberate ignorance of the truth or falsity of such information; or (c) acts in reckless disregard of the truth or falsity of such information.



179. *Neb. Rev. Stat.* §68-936(2) provides that a person who presents a false Medicaid claim under subsection (1) of this section is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, a person who presents a false Medicaid claim under subsection (1) of this section may be subject to damages in the amount of three times the amount of the false claim submitted to the State of Nebraska due to the act of such person.

180. If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the State of Nebraska's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

181. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States under which it had a duty to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

182. The State of Nebraska participated in the MDRP under which it received rebates from Wyeth from its purchases of each type or formulation of Protonix Oral and Protonix IV.

183. The Best Prices reported by Wyeth on each type or formulation of Protonix Oral and Protonix IV determined the amount of the rebate Wyeth paid to the State of Nebraska under the MDRP.

184. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth knowingly made, used or caused to be made or used false records or statements to conceal, avoid, or decrease obligations to pay or transmit money or property to the State of Nebraska. Specifically, for each quarter beginning with the second quarter of 2001, and continuing through the fourth quarter of 2006, Wyeth knowingly submitted false quarterly

records or statements to CMS of its Best Prices on each type or formulation of Protonix Oral and Protonix IV. This resulted in the State of Nebraska submitting to the federal government false and inflated requests for reimbursement of Medicaid expenditures as well as improperly reducing Wyeth's rebate obligations to the State of Nebraska under the MDRP.

185. At all relevant times, Wyeth, was aware of its obligation under the Rebate Statute, 42 U.S.C. §1396r-8, to make and to use truthful records or statements regarding the Best Prices on each type or formulation of Protonix Oral and Protonix IV. Wyeth also knew that its Best Price submissions would be relied upon and used by the United States and/or the State of Nebraska to calculate the unit rebate amount, which would affect the amount of the rebates that Wyeth was obligated to pay the State of Nebraska on each type or formulation of Protonix Oral and Protonix IV.

186. Wyeth's false representations of its Best Prices on each type or formulation of Protonix Oral and Protonix IV caused the State of Nebraska to pay the inflated prices and to accept a smaller rebate than if Wyeth had truly and accurately reported its Best Prices.

187. By virtue of Wyeth's actions as set forth above, Wyeth is liable to the State of Nebraska for a civil penalty of up to ten thousand dollars (\$10,000) for each violation of the Nebraska False Medicaid Claims Act, for three times the amount of damages which the State of Nebraska sustained because of the acts of Wyeth, for the costs and the State of Nebraska's attorney fees in this action. *See* Neb. Rev. Stat. §68-936(2)

**COUNT 31.**  
**State of Nebraska**  
**COMMON LAW FRAUD**

188. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

189. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly, or with reckless indifference to the truth, falsely represented its Best Prices and/or its rebate obligations to the State of Nebraska and/or to the United States, or omitted facts to the State of Nebraska and/or to the United States that it had a duty to disclose.

190. Through these representations and/or omissions, Wyeth intended to induce the State of Nebraska to act or refrain from acting.

191. The State of Nebraska did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance. For the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Nebraska paid monies in excess of Wyeth's true Best Prices and consequently received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received If Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

192. By virtue of this conduct, Wyeth is liable to the State of Nebraska for damages and any other relief the Court deems appropriate.

**COUNT 32.**  
**State of Nebraska**  
**BREACH OF CONTRACT**

193. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

194. The State of Nebraska was an intended third party beneficiary of the rebate contract between the United States and Wyeth. Under the terms of the contract, Wyeth had a

duty to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

195. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

196. Wyeth's breach of the contract caused the State of Nebraska to pay inflated prices on each type or formulation of Protonix Oral and Protonix IV and to accept smaller rebates for the same than that to which it would have been entitled had the true Best Prices been represented by Wyeth.

197. By virtue of this conduct, Wyeth is liable to the State of Nebraska for damages and such further relief as the Court deems appropriate.

**COUNT 33.**  
**State of Nebraska**  
**UNJUST ENRICHMENT**

198. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

199. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

200. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Nebraska.

201. By retaining monies that were actually owed to the State of Nebraska under the MDRP, Wyeth retained money that was the property of the State of Nebraska to which Wyeth was not entitled.

202. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Nebraska pursuant to the MDRP.

203. By virtue of this conduct, Wyeth is liable to the State of Nebraska for damages and such further relief as this Court deems appropriate.

WHEREFORE, the State of Nebraska respectfully requests:

a. That judgment be entered in favor of the State of Nebraska and against Defendant, Wyeth.

b. On the State of Nebraska's False Medicaid Claims Act claim, as outlined in Count 29, double damages plus \$5,000 for each false representation made by Wyeth before July 16, 2004 and treble damages plus \$10,000 for each false representation made by Wyeth on or after July 16, 2004 and for representations made before, on or after July 16, 2004, the costs of this action, and reasonable attorney fees.

c. On the State of Nebraska's False Medicaid Claims Act claim, as outlined in Count 30, double damages plus \$5,000 for each false record made or used by Wyeth before July 16, 2004 and treble damages plus \$10,000 for each false record made or used by Wyeth, and for representations made before, on or after July 16, 2004, the costs of this action, and reasonable attorney fees.

d. On the State of Nebraska's Common Law Fraud claim, as outlined in Count 31, an amount equivalent to the loss sustained by the State of Nebraska, costs of this action plus pre-judgment interest and other relief as the Court deems appropriate.

e. On the State of Nebraska's Breach of Contract claim, as outlined in Count 32, damages in an amount equivalent to the loss sustained by the State of Nebraska plus prejudgment interest.

f. On the State of Nebraska's Unjust Enrichment claim, as outlined in Count 33, recovery in the amount of the State of Nebraska's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus costs of this action and prejudgment interest.

### **CLAIMS OF THE STATE OF NEW JERSEY IN INTERVENTION**

#### **COUNT 34. State of New Jersey COMMON LAW FRAUD**

204. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

205. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of New Jersey and/or to the United States.

206. Through these knowingly false and material representations, Wyeth intended to induce the State of New Jersey to act or refrain from acting.

207. The State of New Jersey did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of New Jersey received substantially smaller rebate payments from Wyeth than it was entitled to receive and

which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

208. By virtue of these actions or failures to act, Wyeth is liable to the State of New Jersey for damages and any other relief the Court deems appropriate.

**COUNT 35.**  
**State of New Jersey**  
**BREACH OF CONTRACT**

209. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

210. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

211. The State of New Jersey was an intended third party beneficiary of that contract.

212. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

213. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Price on each type or formulation of Protonix Oral and Protonix IV.

214. By virtue of this conduct, Wyeth is liable to the State of New Jersey for damages and any other relief this court deems appropriate.

**COUNT 36.**  
**State of New Jersey**  
**UNJUST ENRICHMENT**

215. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

216. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

217. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of New Jersey.

218. By retaining monies that were actually owed to the State of New Jersey under the MDRP, Wyeth retained money that was the property of the State of New Jersey and to which Wyeth was not entitled.

219. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of New Jersey pursuant to the Medicaid Drug Rebate Agreement.

220. By virtue of this conduct, Wyeth is liable to the State of New Jersey for damages and any other relief the Court deems appropriate.

WHEREFORE, the State of New Jersey prays:

a. That judgment be entered in favor of the State of New Jersey and against Defendant, Wyeth.

b. On the State of New Jersey's Common Law Fraud claim, as outlined in Count 34; compensatory damages, punitive damages, such amounts to be determined at trial, plus the State of New Jersey's costs in this suit, including reasonable attorneys' fees.



c. On the State of New Jersey's Breach of Contract claim, as outlined in Count 35; impose damages in an amount equivalent to the loss sustained by the State of New Jersey Medicaid Program, plus prejudgment interest.

d. On the State of New Jersey's Unjust Enrichment claim, as outlined in Count 36; recovery in the amount of the State of New Jersey's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of New Jersey's costs in this suit, including all reasonable attorney's fees.

e. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF NORTH CAROLINA IN INTERVENTION**

**COUNT 37.**

**State of North Carolina  
NORTH CAROLINA FALSE CLAIMS ACT  
N.C. Gen. Stat. § 1-605 *et seq.***

221. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

222. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Wyeth violated the North Carolina False Claims Act by:

- a. knowingly making, using, or causing to be made or used false records or statements material to an obligation to pay or transmit money or property to the State of North Carolina, and/or knowingly concealing and/or improperly avoiding or decreasing an obligation to pay or transmit money or property to the State of North Carolina; and
- b. knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim.

223. Wyeth was aware of its obligation under the MDRP, 42 U.S.C. § 1396r-8, to make or use truthful records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

224. Wyeth knew that its submissions to CMS would be used by the United States and the State of North Carolina to determine the amount of the rebate that Wyeth was obligated to pay to the North Carolina Medicaid Program for each drug.

225. Wyeth knowingly made, or used or caused to be made or used, false records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV in order to conceal, avoid, or decrease an obligation to pay or transmit money or property to the North Carolina Medicaid Program, which is jointly funded by the United States and the State of North Carolina.

226. By engaging in the conduct outlined above, Defendant Wyeth caused significant financial loss to the United States and the State of North Carolina.

227. Wyeth is liable to the State of North Carolina for three times the amount of damages sustained by the State of North Carolina. Wyeth is also liable for a civil penalty of not less than five thousand five hundred dollars (\$ 5,500) and not more than eleven thousand dollars (\$ 11,000) for each violation of the North Carolina False Claims Act.

**COUNT 38.**  
**State of North Carolina**  
**NORTH CAROLINA MEDICAL ASSISTANCE PROVIDER**  
**FALSE CLAIMS ACT**  
**N.C. Gen. Stat. § 108a-70.10 *et seq.***

228. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

229. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Wyeth violated the North Carolina Medical Assistance Provider False Claims Act by knowingly making, using, or causing to be made or used false records or statements to get false or fraudulent claims paid or approved by the North Carolina Medicaid Program.

230. For each type or formulation of Protonix Oral and Protonix IV, Wyeth provided false quarterly submissions to CMS of its Best Prices. As a result of these submissions, Wyeth substantially underpaid its rebate obligations to the State of North Carolina under the MDRP and caused the State of North Carolina to submit false and inflated submissions to the Federal Government for reimbursement of Medicaid expenditures. Thus, Wyeth caused the submission of false claims for use in determining payment under the North Carolina Medicaid Program.

231. Wyeth is liable to the State of North Carolina for three times the amount of damages sustained by the State of North Carolina. Wyeth is also liable for a civil penalty of not less than five thousand dollars (\$ 5,000) and not more than ten thousand dollars (\$ 10,000) for each violation of the North Carolina Medical Assistance Provider False Claims Act. Wyeth is also liable to the State of North Carolina for the costs of this civil action to recover damages/penalties, interest on the damages at the maximum legal rate, and the costs of the State's investigation.

**COUNT 39.**  
**State of North Carolina**  
**COMMON LAW FRAUD**

232. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

233. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Wyeth made and/or caused to be made fraudulent statements to the State of North Carolina of its lowest or Best Prices on each type or formulation of Protonix Oral and Protonix IV.

234. Wyeth made and/or caused to be made false and fraudulent material misrepresentations to the State of North Carolina and the United States regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV, failing to disclose and concealing

material facts that it had a duty to disclose, with actual knowledge of the false and fraudulent nature of those misrepresentations and/or with reckless disregard for their truth.

235. Wyeth's false representations and concealment of material facts were reasonably calculated to deceive, and Wyeth intended that the State of North Carolina rely upon these material misrepresentations and concealments.

236. The State of North Carolina did, in fact reasonably rely upon and was deceived by Wyeth's fraudulent misrepresentations and concealment of material facts. As a result, for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of North Carolina received substantially smaller rebate payments than it would have otherwise been entitled to receive if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

237. Wyeth is liable to the State of North Carolina for damages in an amount equivalent to the loss sustained by the North Carolina Medicaid Program, plus pre-judgment interest.

**COUNT 40.**  
**State of North Carolina**  
**BREACH OF CONTRACT**

238. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

239. The State of North Carolina was an intended third party beneficiary of Wyeth's valid and enforceable rebate contract with the United States.

240. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices for each type or formulation of Protonix Oral and Protonix IV.

241. From the second quarter of 2001 continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

242. By virtue of this conduct, Wyeth is liable to the State of North Carolina for damages and any other relief the Court deems appropriate.

**COUNT 41.**  
**State of North Carolina**  
**UNJUST ENRICHMENT**

243. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

244. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

245. The North Carolina Medicaid program received substantially smaller Medicaid rebates than it would have received had Wyeth truthfully reported its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

246. If Wyeth had not falsely inflated its Best Prices, Wyeth would have been required to pay substantially larger rebates to the State of North Carolina.

247. By retaining monies that were actually owed to the State of North Carolina under the MDRP, Wyeth retained money that is the property of the State of North Carolina to which it was not entitled.

248. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of North Carolina, pursuant to the MDRP, absent

Wyeth's false and fraudulent misrepresentations regarding the Best Prices on each type or formulation of Protonix Oral and Protonix IV.

249. Wyeth has been unjustly enriched as a result of its failure to make restitution to the State of North Carolina for monies Wyeth retained under circumstances giving rise to an obligation to account therefore.

WHEREFORE, the State of North Carolina respectfully asks this Court for the entry of judgment against Wyeth, providing the following relief:

- a. Damages in the full amount the State of North Carolina should have properly received from Wyeth for rebate amounts Wyeth was obligated, but failed, to pay;
- b. Three times the amount of damages suffered by the State of North Carolina as a result of Wyeth's conduct, pursuant to N.C. Gen. Stat. §§ 1-607(a) and 108A-70.12(b)(1);
- c. A civil penalty of not less than \$5,500.00 or more than \$11,000.00 for each violation of the North Carolina False Claims Act, or a civil penalty of not less than \$5,000 or more than \$10,000.00 for each violation of the North Carolina Medical Assistance Provider False Claims Act;
- d. The costs of this civil action to recover penalties and damages, interest on damages at the maximum legal rate, and the costs of the State of North Carolina's investigation pursuant to N.C. Gen. Stat. § 108A-70.12(b)(3);
- e. Pre-judgment and post-judgment interest; and
- f. Such other relief as the Court may deem appropriate.

**CLAIMS OF THE STATE OF OREGON IN INTERVENTION**

**COUNT 42.**

**State of Oregon**

**FALSE CLAIMS FOR HEALTH CARE PAYMENT**

**ORS 165.692**

250. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

251. The defendant, on and between the second quarter of 2001 and continuing through the fourth quarter of 2006, in Marion County, Oregon, knowingly failed to disclose to a health care payor, the Oregon Medicaid Program, the existence of information material in the submission of Medicaid claims, and as a result obtained health care payments to which defendant was not entitled.

252. By virtue of this conduct, Wyeth is liable to the State of Oregon for damages and any other relief the Court deems appropriate.

**COUNT 43.**

**State of Oregon**

**RECOVERY OF MEDICAID OVERPAYMENT.**

253. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

254. Pursuant to the Oregon Administrative Rules, during the relevant time period, Wyeth at all times submitted Medicaid claims to the State of Oregon Medicaid Program in Salem [Marion County], Oregon.

255. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Oregon and/or to the United States.

256. Through these knowingly false and material representations, Wyeth intended to induce the State of Oregon to act or refrain from acting.

257. The State of Oregon did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Oregon received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

258. All Medicaid payments made to Wyeth by the Oregon Medicaid Program during the relevant time period were made upon claims submitted by a provider that did not comply with governing Medicaid rules and regulations, and should be deemed an overpayment owed the State of Oregon by Wyeth.

259. By virtue of this conduct, Wyeth is liable to the State of Oregon for damages and any other relief this court deems appropriate.

**COUNT 44.**  
**State of Oregon**  
**MONEY PAID BY MISTAKE**

260. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

261. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Oregon and/or to the United States.

262. Through these knowingly false and material representations, Wyeth intended to induce the State of Oregon to act or refrain from acting.



263. The State of Oregon did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: between 2001 and 2006, the State of Oregon received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

264. The State of Oregon made Medicaid payments to defendant based on the erroneous belief Wyeth was in compliance with the governing rules/regulations and that Wyeth had not made any material misrepresentation or omissions.

265. The erroneous beliefs were material to the State of Oregon, since under the governing regulations, the Medicaid claims would not have been payable had the State of Oregon known of the material misrepresentations and/ or omissions and/or failure to comply with applicable laws and regulations. Because of these mistakes of fact, Medicaid payments were made to defendant by the State of Oregon, to which defendant was not entitled.

266. By virtue of this conduct, Wyeth is liable to the State of Oregon for damages and any other relief this court deems appropriate.

**COUNT 45.**  
**State of Oregon**  
**MONEY HAD AND RECEIVED**

267. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

268. From the second quarter of calendar year 2001 and continuing through the fourth quarter of calendar year 2006, Wyeth falsely reported its Best Prices to CMS on each type or formulation of Protonix Oral and Protonix IV.

269. The defendant owes the State of Oregon for Medicaid overpayments had and received from the State of Oregon to which defendant was not lawfully entitled.

270. By virtue of this conduct, Wyeth is liable to the State of Oregon for damages and any other relief this court deems appropriate.

**COUNT 46.**  
**State of Oregon**  
**COMMON LAW FRAUD**

271. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

272. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Oregon and/or to the United States.

273. Through these knowingly false and material representations, Wyeth intended to induce the State of Oregon to act or refrain from acting.

274. The State of Oregon did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Oregon received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

275. By virtue of these actions or failures to act, Wyeth is liable to the State of Oregon for damages and any other relief the Court deems appropriate.

**COUNT 47.**  
**State of Oregon**  
**BREACH OF CONTRACT**

276. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

277. As discussed in the allegations contained in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

278. The State of Oregon was an intended third party beneficiary of that contract.

279. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

280. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Price on each type or formulation of Protonix Oral and Protonix IV.

281. By virtue of this conduct, Wyeth is liable to the State of Oregon for damages and any other relief this court deems appropriate.

**COUNT 48.**  
**State of Oregon**  
**UNJUST ENRICHMENT**

282. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

283. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

284. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Oregon.

285. By retaining monies that were actually owed to the State of Oregon under the MDRP, Wyeth retained money that was the property of Oregon and to which Wyeth was not entitled.

286. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Oregon pursuant to MDRP.

287. By virtue of this conduct, Wyeth is liable to the State of Oregon for damages and any other relief the Court deems appropriate.

WHEREFORE, the State of Oregon prays:

a. That judgment be entered in favor of the State of Oregon and against Defendant, Wyeth.

b. On the State of Oregon's False Claims For Health Care Payments claim, as outlined in Count 42; payment of damages sustained and any other relief the Court deems appropriate.

c. On the State of Oregon's Recovery of Medicaid Overpayment claim, as outlined in Count 43; payment of damages sustained and any other relief the Court deems appropriate.

d. On the State of Oregon's Money Paid by Mistake claim, as outlined in Count 44; payment of damages sustained and any other relief the Court deems appropriate.

e. On the State of Oregon's Money Had and Received claim, as outlined in Count 45; payment of damages sustained and any other relief the Court deems appropriate.

f. On the State of Oregon's Common Law Fraud claim, as outlined in Count 46; payment of damages sustained and any other relief the Court deems appropriate.

g. On the State of Oregon's Breach of Contract claim, as outlined in Count 47; payment of damages sustained and any other relief the Court deems appropriate.

h. On the State of Oregon's Unjust Enrichment claim, as outlined in Count 48; payment of damages sustained and any other relief the Court deems appropriate.

i. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF RHODE ISLAND IN INTERVENTION**

**COUNT 49.  
State of Rhode Island  
COMMON LAW FRAUD**

288. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

289. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Rhode Island and/or to the United States.

290. Through these knowingly false and material representations, Wyeth intended to induce the State of Rhode Island to act or refrain from acting.

291. The State of Rhode Island did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second

quarter of 2001 and continuing through the fourth quarter of 2006, the State of Rhode Island received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

292. By virtue of these actions or failures to act, Wyeth is liable to the State of Rhode Island for damages and any other relief the Court deems appropriate.

**COUNT 50.**  
**State of Rhode Island**  
**BREACH OF CONTRACT**

293. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

294. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

295. The State of Rhode Island was an intended third party beneficiary of that contract.

296. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

297. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

298. By virtue of this conduct, Wyeth is liable to the State of Rhode Island for damages and any other relief this court deems appropriate.

**COUNT 51.**  
**State of Rhode Island**  
**UNJUST ENRICHMENT**

299. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

300. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

301. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Rhode Island.

302. By retaining monies that were actually owed to the State of Rhode Island under the MDRP, Wyeth retained money that was the property of the State of Rhode Island and to which Wyeth was not entitled.

303. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Rhode Island pursuant to MDRP.

304. By virtue of this conduct, Wyeth is liable to the State of Rhode Island for damages and any other relief the Court deems appropriate.

WHEREFORE, the State of Rhode Island prays:

a. That judgment be entered in favor of the State of Rhode Island and against Defendant, Wyeth.

b. On the State of Rhode Island's Common Law Fraud claim, as outlined in Count 49; compensatory damages, punitive damages, such amounts to be determined at

trial, plus the State of Rhode Island's costs in this suit, including reasonable attorneys' fees.

c. On the State of Rhode Island's Breach of Contract claim, as outlined in Count 50; impose damages in an amount equivalent to the loss sustained by the State of Rhode Island Medicaid Program, plus prejudgment interest.

d. On the State of Rhode Island's Unjust Enrichment claim, as outlined in Count 51; recovery in the amount of the State of Rhode Island's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of Rhode Island's costs in this suit, including all reasonable attorney's fees.

e. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF SOUTH CAROLINA IN INTERVENTION**

**COUNT 52.**

**State of South Carolina**

**SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

**S.C. Code Ann. § 39-5-10, *et seq.***

305. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

306. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Wyeth knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State of South Carolina.

307. Wyeth was aware of its obligation under the MDRP, 42 U.S.C. § 1396r-8, to make or use truthful records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV.



308. Wyeth also knew that its submissions to CMS would be used by the United States and the State of South Carolina to determine the amount of the rebate that it was obligated to pay to the South Carolina Medicaid Program for each drug.

309. Wyeth knowingly made, or used or caused to be made or used, false records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV in order to conceal, avoid, or decrease an obligation to pay or transmit money or property to the South Carolina Medicaid Program, which program is jointly funded by the United States and the State of South Carolina. By engaging in the conduct outlined above, Defendant Wyeth engaged in unfair or deceptive acts or practices, and caused significant financial loss to the United States and the State of South Carolina.

310. The misrepresentations, actions and practices of Wyeth as described above constitute unfair and/or deceptive methods as defined by the South Carolina Unfair Trade Practices Act. Wyeth's actions have a direct impact upon the public interest.

311. As a proximate result of Wyeth's deceptive acts and/or practices, the State of South Carolina has suffered actual damages.

WHEREFORE, the State of South Carolina respectfully requests this Court to enter judgment for the State of South Carolina and against defendant Wyeth for three times the amount of damages sustained by the State of South Carolina, together with attorneys' fees and costs, and a civil penalty of \$5,000.00 for each deceptive act of submitting false statements of best price by Wyeth.

**COUNT 53.**  
**State of South Carolina**  
**COMMON LAW FRAUD**

312. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

313. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth made and/or caused to be made fraudulent statements to the State of South Carolina of its lowest or Best Prices on each type or formulation of Protonix Oral and Protonix IV.

314. Defendant Wyeth made and/or caused to be made fraudulent material misrepresentations to the State of South Carolina and the United States regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV, failing to disclose material facts that it had a duty to disclose, with actual knowledge of their false and fraudulent nature of those misrepresentations and/or with reckless disregard for their truth.

315. Defendant Wyeth intended that the State of South Carolina rely upon these material misrepresentations.

316. The State of South Carolina did, in fact rely upon Wyeth's fraudulent misrepresentations. As a result, for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of South Carolina received substantially smaller rebate payments than it would have otherwise been entitled to receive if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

WHEREFORE, the State of South Carolina respectfully requests this Court to enter judgment for the State of South Carolina and against defendant Wyeth, and impose damages in

an amount equivalent to the loss sustained by the State of South Carolina Medicaid Program, plus pre-judgment interest.

**COUNT 54.**  
**State of South Carolina**  
**BREACH OF CONTRACT**

317. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

318. As discussed above, Wyeth entered into a rebate contract with the United States.

The State of South Carolina was an intended third party beneficiary of that contract. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

319. From the second quarter of 2001 continuing through the fourth quarter of 2006, Defendant Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

320. By virtue of this conduct, Wyeth is liable to the State of South Carolina for damages and any other relief the Court deems appropriate.

WHEREFORE, the Plaintiff State of South Carolina respectfully requests this Court to enter judgment for the State of South Carolina and against defendant Wyeth, and impose damages in an amount equivalent to the loss sustained by the State of South Carolina Medicaid Program, plus pre-judgment interest.

**COUNT 55.**  
**State of South Carolina**  
**UNJUST ENRICHMENT**

321. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

322. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

323. The State of South Carolina Medicaid program received substantially smaller Medicaid rebates than they would have received had Wyeth truthfully reported its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

324. If Wyeth had not falsely inflated its Best Prices, Wyeth would have been required to pay substantially larger rebates to the State of South Carolina.

325. By retaining monies that were actually owed to the State of South Carolina under the MDRP, Wyeth retained money that is the property of the State of South Carolina to which it was not entitled.

326. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of South Carolina, pursuant to the MDRP, absent Wyeth's false and fraudulent misrepresentations regarding the Best Prices on each type or formulation of Protonix Oral and Protonix IV.

WHEREFORE, the State of South Carolina respectfully requests this Court to enter judgment for the State of South Carolina and against defendant Wyeth, and impose damages in an amount equivalent to the loss sustained by the State of South Carolina Medicaid Program, plus pre-judgment interest.

WHEREFORE, the State of South Carolina prays:

a. That judgment be entered in favor of the State of South Carolina and against Defendant, Wyeth.

b. On the State of South Carolina's Unfair Trade Practices claim, as outlined in Count 52; three times the amount of damages sustained by the State of South Carolina, together with attorneys' fees and costs, and a civil penalty of \$5,000.00 for each deceptive act.

c. On the State of South Carolina's Common Law Fraud claim, as outlined in Count 53; damages in an amount equivalent to the loss sustained by the State of South Carolina Medicaid Program, plus pre-judgment interest.

d. On the State of South Carolina's Breach of Contract claim, as outlined in Count 54; impose damages in an amount equivalent to the loss sustained by the State of South Carolina Medicaid Program, plus prejudgment interest.

e. On the State of South Carolina's Unjust Enrichment claim, as outlined in Count 55; impose damages in an amount equivalent to the loss sustained by the State of South Carolina Medicaid Program, plus prejudgment interest.

f. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF SOUTH DAKOTA IN INTERVENTION**

**COUNT 56.  
State of South Dakota  
VIOLATION OF SDCL § 22-45-2**

327. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

328. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made or caused to be made a claim, knowing the claim to be false, in whole or in part, by commission or omission; or made or caused to be made a statement or representation for use

in obtaining or seeking to obtain authorization to provide a good or a service, knowing the statement or representation to be false, in whole or in part, by commission or omission; or made or caused to be made a statement or representation for use by another in obtaining a good or a service under the program, knowing the statement or representation to be false, in whole or in part, by commission or omission; or made or caused to be made a statement or representation for use in qualifying as a provider of a good or a service under the program, knowing the statement or representation to be false, in whole or in part, by commission or omission, in violation of SDCL § 22-45-2.

329. Specifically, Wyeth knowingly made false claims, statements, or representations, regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV to improperly reduce its rebate obligations to South Dakota under the MDRP.

330. By virtue of the false claims, statements, or representations that Wyeth made, the State of South Dakota suffered damages and therefore is entitled to payment of interest on the amount of the excess payment, payment of up to three times the amount of damages sustained, including the costs of investigation and litigation, and payment in the sum of \$2,000.00 for each false or fraudulent claim, statement, or representation submitted for providing a good or service, pursuant to SDCL § 22-45-7.

**COUNT 57.**  
**State of South Dakota**  
**VIOLATION OF SDCL § 22-45-5**

331. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

332. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth charged,

solicited, accepted, or received anything of additional value in addition to the amount legally payable under the program in connection with a provision of a good or a service, in violation SDCL § 22-45-5.

333. Specifically, Wyeth charged, solicited, accepted, or received higher payments than the amount legally payable under the program on each type or formulation of Protonix Oral and Protonix IV from the South Dakota Medicaid Program.

334. By virtue of Wyeth's conduct in charging, soliciting, accepting, or receiving anything of additional value in addition to the amount legally payable under the program in connection with a provision of a good or a service, the State of South Dakota suffered damages and therefore is entitled to payment of interest on the amount of the excess payment, payment of up to three times the amount of damages sustained, including the costs of investigation and litigation, and payment in the sum of \$2,000.00 for each false or fraudulent claim, statement, or representation submitted for providing a good or service, pursuant to SDCL § 22-45-7.

**COUNT 58.**  
**State of South Dakota**  
**COMMON LAW FRAUD**

335. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

336. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of South Dakota and/or to the United States.

337. Through these knowingly false and material representations, Wyeth intended to induce the State of South Dakota to act or refrain from acting.

338. The State of South Dakota did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of South Dakota received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

339. By virtue of these actions or failures to act, Wyeth is liable to the State of South Dakota for damages and any other relief the Court deems appropriate.

**COUNT 59.**  
**State of South Dakota**  
**BREACH OF CONTRACT**

340. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

341. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

342. The State of South Dakota was an intended third party beneficiary of that contract.

343. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

344. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

345. By virtue of this conduct, Wyeth is liable to the State of South Dakota for damages and any other relief this court deems appropriate.



**COUNT 60.**  
**State of South Dakota**  
**UNJUST ENRICHMENT**

346. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

347. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

348. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of South Dakota.

349. By retaining monies that were actually owed to the State of South Dakota under the MDRP, Wyeth retained money that was the property of the State of South Dakota and to which Wyeth was not entitled.

350. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of South Dakota pursuant to MDRP.

351. By virtue of this conduct, Wyeth is liable to the State of South Dakota for damages and any other relief the Court deems appropriate.

**COUNT 61.**  
**State of South Dakota**  
**DISGORGEMENT**

352. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

353. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

354. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of South Dakota.

355. By retaining monies that were actually owed to the State of South Dakota under the MDRP, Wyeth retained money that was the property of the State of South Dakota and to which Wyeth was not entitled.

356. By virtue of this conduct, Wyeth is liable to the State of South Dakota and the State seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the State of South Dakota.

WHEREFORE, the State of South Dakota prays:

a. That judgment be entered in favor of the State of South Dakota and against Defendant, Wyeth.

b. On the State of South Dakota's claim involving Wyeth's violation of SDCL 22-45-2, as outlined in Count 56; payment of interest, payment of up to three times the amount of damages sustained, including the cost of investigation and litigation, and payment in the sum of \$2,000.00 for each false or fraudulent claim, statement, or representation submitted for providing a good or service, pursuant to SDCL § 22-45-7.

c. On the State of South Dakota's claim involving Wyeth's violation of SDCL 22-45-5, as outlined in Count 57; payment of interest, payment of up to three times the amount of damages sustained, including the cost of investigation and litigation,

and payment in the sum of \$2,000.00 for each false or fraudulent claim, statement, or representation submitted for providing a good or service, pursuant to SDCL § 22-45-7.

d. On the State of South Dakota's Common Law Fraud claim, as outlined in Count 58; compensatory damages, and punitive damages (such amounts to be determined at trial), plus the State of South Dakota's costs in this suit, including reasonable attorneys' fees.

e. On the State of South Dakota's Breach of Contract claim, as outlined in Count 59; impose damages in an amount equivalent to the loss sustained by the State of South Dakota Medicaid Program, plus prejudgment interest.

f. On the State of South Dakota's Unjust Enrichment claim, as outlined in Count 60; recovery in the amount of the State of South Dakota's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of South Dakota's costs in this suit, including all reasonable attorney's fees.

g. On the State of South Dakota's Disgorgement claim, as outlined in Count 61; an amount equivalent to the loss sustained by the State of South Dakota, prejudgment interest and punitive damages.

h. For such other and further relief that the Court deems just and necessary.

#### **CLAIMS OF THE STATE OF UTAH IN INTERVENTION**

##### **COUNT 62.**

##### **State of Utah**

##### **UTAH FALSE CLAIMS ACT**

##### **Utah Code Ann. §26-20-1**

357. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

358. The Utah False Claims Act, Utah Code Ann. §26-20-7 and §26-20-9.5, provides in pertinent part, that:

- (1) A person may not make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit:
  - (a) which is wholly or partially false, fictitious, or fraudulent;
  - ...
- (2) In addition to the prohibitions in Subsection (1), a person may not:
  - ...
  - (c) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;
  - (d) retain any unauthorized payment as a result of acts described by this section; Utah Code Ann. § 26-20-7.

359. The Utah False Claims Act, Utah Code Ann. §26-20-9.5 further provides in pertinent part that:

- (1) The culpable mental state required for a civil violation of this chapter is "knowing" or "knowingly" which:
  - (a) means that person, with respect to information:
    - (i) has actual knowledge of the information;
    - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
    - (iii) acts in reckless disregard of the truth or falsity of the information; and
  - (b) does not require a specific intent to defraud.
- (2) Any person who violates this chapter shall, in all cases, in addition to other penalties provided by law, be required to:
  - (a) make full and complete restitution to the state of all damages that the state sustains because of the person's violation of this chapter;
  - (b) pay to the state its costs of enforcement of this chapter in that case, including but not limited to the cost of investigators, attorneys, and other public employees, as determined by the state; and
  - (c) pay to the state a civil penalty equal to
    - (i) three times the amount of damages that the state sustains because of the person's violation of this chapter; and

(ii) not less than \$5,000 or more than \$10,000 for each claim filed or act done in violation of this chapter.

360. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth knowingly, or with deliberate ignorance of the truth or falsity of the information; or acting with reckless disregard of the truth or falsity of the information did present or cause to be made or presented to an employee or officer of the state of Utah a claim for a medical benefit which was wholly or partially false, fictitious, or fraudulent to get claims paid or approved by the State of Utah.

361. Wyeth, acting knowingly or with deliberate ignorance or reckless disregard of the truth, submitted false quarterly reports, documents or statements to CMS of its Best Price on each type or formulation of Protonix Oral and Protonix IV. This improperly reduced Wyeth's rebate obligations to the State of Utah under the MDRP, while also causing the State of Utah to submit to the Federal Government false and inflated request for reimbursement of Medicaid expenditures.

362. Pursuant to Sections §26-20-9.5, Utah Code Ann., the State of Utah is entitled to full and complete restitution, treble the actual damages sustained by the State of Utah, not less than \$5,000 or more than \$10,000 for each claim filed or act done in violation of Utah Code Ann. §26-20-7, and costs of enforcement, including but not limited to cost of investigators, attorneys fees, and other support staff, for each claim filed or act done in violation of the Utah Code Ann. §26-20-7.

**COUNT 63.**  
**State of Utah**  
**UTAH FALSE CLAIMS ACT**  
**Utah Code Ann. § 26-20-7.**

363. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

364. Wyeth was aware of its obligation as a participant in the MDRP, 42 U.S.C. § 1396r-8, to make or use truthful records, reports, documents or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

365. Wyeth also knew that its submissions to CMS would be used by the State of Utah to determine the amount of the rebate Wyeth was obligated to pay the State of Utah.

366. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth knowingly presented, or caused to be presented, or with deliberate ignorance of the truth or falsity of the information, or acting with reckless disregard of the truth or falsity of the information, submitted false reports or documents to CMS regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV in order to conceal, avoid, or decrease an obligation to pay or transmit money to the State of Utah Medicaid Program.

367. Wyeth willfully reported false or inflated Best Prices to CMS, causing the State of Utah Medicaid Program to invoice Wyeth and to receive from Wyeth smaller rebate amounts on each type or formulation of Protonix Oral or Protonix IV to which the State of Utah was entitled.

368. Pursuant to sections Utah Code Ann. §26-20-7 and §26-20-9.5, Wyeth falsified with intent to deceive, reports or documents required by state or federal law, rule, relating to its Best Prices on each type or formulation of Protonix Oral or Protonix IV. Further, they retained the unauthorized payments they received as a result of acts described in this Complaint.

369. Pursuant to Utah Code Ann. §26-20-9.5, Utah Code Ann., the State of Utah is entitled to full and complete restitution, treble the actual damages sustained by the State of Utah, not less than \$5,000 or more than \$10,000 for each claim filed or act done in violation of Utah Code Ann. §26-20-7, and costs of enforcement, including but not limited to cost of investigators, attorneys fees, and other support staff, for each claim filed or act done in violation of the Utah Code Ann. §26-20-7.

**COUNT 64.**  
**State of Utah**  
**COMMON LAW FRAUD**

370. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

371. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Utah and/or to the United States.

372. Through these knowingly false and material representations, Wyeth intended to induce the State of Utah to act or refrain from acting.

373. The State of Utah did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Utah received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

374. By virtue of these actions or failures to act, Wyeth is liable to the State of Utah for damages and any other relief the Court deems appropriate.

**COUNT 65.**  
**State of Utah**  
**BREACH OF CONTRACT**

375. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

376. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

377. The State of Utah was an intended third party beneficiary of that contract.

378. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

379. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

380. By virtue of this conduct, Wyeth is liable to the State of Utah for damages and any other relief this court deems appropriate.

**COUNT 66.**  
**State of Utah**  
**UNJUST ENRICHMENT**

381. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

382. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.



383. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Utah.

384. By retaining monies that were actually owed to the State of Utah under the MDRP, Wyeth retained money that was the property of the State of Utah and to which Wyeth was not entitled.

385. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Utah pursuant to MDRP.

386. By virtue of this conduct, Wyeth is liable to the State of Utah for damages and any other relief the Court deems appropriate.

**COUNT 67.**  
**State of Utah**  
**DISGORGEMENT**

387. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

388. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

389. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Utah.

390. By retaining monies that were actually owed to the State of Utah under the MDRP, Wyeth retained money that was the property of the State of Utah and to which Wyeth was not entitled.

391. By virtue of this conduct, Wyeth is liable to the State of Utah and the State seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the State of Utah.

WHEREFORE, the State of Utah prays for judgment and relief on all causes of action as set forth above as follows:

a. That judgment be entered in favor of the State of Utah and against Defendant, Wyeth for full and complete restitution to the State of Utah for all damages that the state has sustained.

b. That judgment be entered in favor of the State of Utah and against Defendant, Wyeth for the costs of enforcement, including, but not limited to, the costs of investigators, attorneys, special prosecutors, and other public employees of the State of Utah assisting in this matter.

c. That judgment be entered in favor of the State of Utah and against Defendant, Wyeth for three times the amount of damages that the State of Utah sustained because of Wyeth's conduct as outlined in the above causes of action.

d. That judgment be entered in favor of the State of Utah and against Defendant, Wyeth for not less than \$5,000 or more than \$10,000 for each claim filed or act done by Wyeth as outlined in the above causes of actions.

e. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF VERMONT IN INTERVENTION**

**COUNT 68.  
State of Vermont  
CONSUMER FRAUD  
9 V.S.A. § 2453(a)**

392. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

393. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Vermont and/or to the United States.

394. Through these knowingly false and material representations, Wyeth intended to induce the State of Vermont to act or refrain from acting.

395. The State of Vermont justifiably relied on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Vermont received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

396. Defendants have engaged in unfair or, in the alternative, deceptive acts or practices in commerce, contrary to 9 V.S.A. § 2453(a), in the course of and as a result of the conduct described herein.

397. By virtue of these actions or failures to act, Wyeth is liable to the State of Vermont for monetary and injunctive relief pursuant to the Vermont Consumer Fraud Act.

**COUNT 69.**  
**State of Vermont**  
**COMMON LAW FRAUD**

398. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

399. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Vermont and/or to the United States.

400. Through these knowingly false and material representations, Wyeth intended to induce the State of Vermont to act or refrain from acting.

401. The State of Vermont did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Vermont received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

402. By virtue of these actions or failures to act, Wyeth is liable to the State of Vermont for damages and any other relief the Court deems appropriate.

**COUNT 70.**  
**State of Vermont**  
**BREACH OF CONTRACT**

403. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

404. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

405. The State of Vermont was an intended third party beneficiary of that contract.

406. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

407. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

408. By virtue of this conduct, Wyeth is liable to the State of Vermont for damages and any other relief this court deems appropriate.

**COUNT 71.**  
**State of Vermont**  
**UNJUST ENRICHMENT**

409. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

410. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

411. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Vermont.

412. By retaining monies that were actually owed to the State of Vermont under the MDRP, Wyeth retained money that was the property of the State of Vermont and to which Wyeth was not entitled.

413. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Vermont pursuant to MDRP.

414. By virtue of this conduct, Wyeth is liable to the State of Vermont for damages and any other relief the Court deems appropriate.

**COUNT 72.**  
**State of Vermont**  
**DISGORGEMENT**

415. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

416. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

417. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Vermont.

418. By retaining monies that were actually owed to the State of Vermont under the MDRP, Wyeth retained money that was the property of the State of Vermont and to which Wyeth was not entitled.

419. By virtue of this conduct, Wyeth is liable to the State of Vermont and the State seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the State of Vermont.

WHEREFORE, the State of Vermont prays:

a. That judgment be entered in favor of the State of Vermont and against Defendant, Wyeth.

b. On the State of Vermont's Consumer Fraud claim, as outlined in Count 68; monetary and injunctive relief as provided by the Vermont Consumer Fraud Act.

c. On the State of Vermont's Common Law Fraud claim, as outlined in Count 69; compensatory damages, punitive damages, such amounts to be determined at trial, plus the State of Vermont's costs in this suit, including reasonable attorneys' fees.

d. On the State of Vermont's Breach of Contract claim, as outlined in Count 70; impose damages in an amount equivalent to the loss sustained by the State of Vermont Medicaid Program, plus prejudgment interest.

e. On the State of Vermont's Unjust Enrichment claim, as outlined in Count 71; recovery in the amount of the State of Vermont's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of Vermont's costs in this suit, including all reasonable attorney's fees.

f. On the State of Vermont's Disgorgement claim, as outlined in Count 72; an amount equivalent to the loss sustained by Vermont, prejudgment interest and punitive damages.

g. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF WASHINGTON IN INTERVENTION**

**COUNT 73.  
State of Washington  
FRAUDULENT PRACTICES STATUTE  
RCW 74.09.210**

420. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

421. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Washington and/or to the United States.

422. Wyeth was aware of its obligation as a participant in the MDRP, 42 U.S.C. § 1396r-8, to make or use truthful records or statements regarding its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

423. Wyeth also knew that its submissions to CMS would be used by the State of Washington to determine the amount of the rebate Wyeth was obligated to pay the State of Washington.

424. Wyeth knowingly obtained or attempted to obtain benefits or payments in a greater amount than that to which it was entitled by means of a willful false statement, by willful misrepresentation, and by concealment of material facts relating to its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

425. Wyeth knowingly violated RCW 74.09.210(1) by reporting false and inflated Best Prices to CMS, causing the State of Washington Medicaid Program to receive from Wyeth smaller rebate amounts on each type or formulation of Protonix Oral and Protonix IV than the State of Washington was entitled to receive.

426. Pursuant to RCW 74.09.210(2), the State of Washington is entitled to treble the actual damages sustained.



**COUNT 74.**  
**State of Washington**  
**COMMON LAW FRAUD**

427. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

428. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Washington and/or to the United States.

429. Through these knowingly false and material representations, Wyeth intended to induce the State of Washington to act or refrain from acting.

430. The State of Washington did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Washington received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

431. By virtue of these actions or failures to act, Wyeth is liable to the State of Washington for damages and any other relief the Court deems appropriate.

**COUNT 75.**  
**State of Washington**  
**BREACH OF CONTRACT**

432. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

433. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

434. The State of Washington was an intended third party beneficiary of that contract.

435. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

436. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

437. By virtue of this conduct, Wyeth is liable to the State of Washington for damages and any other relief this court deems appropriate.

**COUNT 76.**  
**State of Washington**  
**UNJUST ENRICHMENT**

438. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

439. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

440. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Washington.

441. By retaining monies that were actually owed to the State of Washington under the MDRP, Wyeth retained money that was the property of the State of Washington and to which Wyeth was not entitled.

442. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Washington pursuant to MDRP.

443. By virtue of this conduct, Wyeth is liable to the State of Washington for damages and any other relief the Court deems appropriate.

**COUNT 77.**  
**State of Washington**  
**DISGORGEMENT**

444. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

445. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

446. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Washington.

447. By retaining monies that were actually owed to the State of Washington under the MDRP, Wyeth retained money that was the property of the State of Washington and to which Wyeth was not entitled.

448. By virtue of this conduct, Wyeth is liable to the State of Washington and the State seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the State of Washington.

WHEREFORE, the State of Washington prays:

a. That judgment be entered in favor of the State of Washington and against Defendant, Wyeth.

b. On the State of Washington's Fraudulent Practices claim, as outlined in Count 73; compensatory damages, treble punitive damages, in such amounts to be determined at trial, plus the State of Washington's costs in this suit, including reasonable attorneys' fees, plus prejudgment interest.

c. On the State of Washington's Common Law Fraud claim, as outlined in Count 74; impose damages in an amount equivalent to the loss sustained by the State of Washington Medicaid Program, plus prejudgment interest plus the State of Washington's costs in this suit, including all reasonable attorney's fees.

d. On the State of Washington's Breach of Contract claim, as outlined in Count 75; impose damages in an amount equivalent to the loss sustained by the State of Washington Medicaid Program, plus prejudgment interest.

e. On the State of Washington's Unjust Enrichment claim, as outlined in Count 76; recovery in the amount of the State of Washington's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of Washington's costs in this suit, including all reasonable attorney's fees, plus prejudgment interest.

f. On the State of Washington's Disgorgement claim, as outlined in Count 77; an amount equivalent to the loss sustained by the State of Washington, prejudgment interest and punitive damages.

g. For such other and further relief that the Court deems just and necessary.

**CLAIMS OF THE STATE OF WYOMING IN INTERVENTION**

**COUNT 78.  
State of Wyoming  
COMMON LAW FRAUD**

449. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

450. From the second quarter of 2001 and continuing through the fourth quarter of 2006, with respect to each type or formulation of Protonix Oral and Protonix IV, Wyeth knowingly made and/or caused to be made, a false material representation regarding its Best Prices and/or its rebate obligations to the State of Wyoming and/or to the United States.

451. Through these knowingly false and material representations, Wyeth intended to induce the State of Wyoming to act or refrain from acting.

452. The State of Wyoming, reasonably believing the representation to be true, did in fact justifiably rely on Wyeth's representations and/or omissions and was injured by that reliance: for the period beginning with the second quarter of 2001 and continuing through the fourth quarter of 2006, the State of Wyoming received substantially smaller rebate payments from Wyeth than it was entitled to receive and which it would have received if Wyeth had submitted true and accurate statements of its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

453. By virtue of these actions or failures to act, Wyeth is liable to the State of Wyoming for damages and any other relief the Court deems appropriate.

**COUNT 79.**  
**State of Wyoming**  
**BREACH OF CONTRACT**

454. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

455. As discussed in the Amended Complaint of the States and the District of Columbia and above, Wyeth entered into a rebate contract with the United States.

456. The State of Wyoming was an intended third party beneficiary of that contract.

457. Under the terms of the agreement, Wyeth had a duty to, *inter alia*, accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

458. From the second quarter of 2001 and continuing through the fourth quarter of 2006, Wyeth breached that contract by failing to accurately report its Best Prices on each type or formulation of Protonix Oral and Protonix IV.

459. By virtue of this conduct, Wyeth is liable to the State of Wyoming for damages and any other relief this court deems appropriate.

**COUNT 80.**  
**State of Wyoming**  
**UNJUST ENRICHMENT**

460. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

461. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

462. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Wyoming.

463. By retaining monies that were actually owed to the State of Wyoming under the MDRP, Wyeth retained money that was the property of the State of Wyoming and to which Wyeth was not entitled. Wyeth has been unjustly enriched by retaining the use and enjoyment of the monies that should have been paid to the State of Wyoming pursuant to MDRP.

464. By virtue of this conduct, Wyeth is liable to the State of Wyoming for damages and any other relief the Court deems appropriate.

**COUNT 81.**  
**State of Wyoming**  
**DISGORGEMENT**

465. The allegations in all of the preceding paragraphs are realleged as if fully set forth herein.

466. From the second quarter of 2001 and continuing through to the fourth quarter of 2006, Defendant Wyeth knowingly inflated its Best Prices submitted on quarterly statements to CMS.

467. If Wyeth had not falsely inflated its Best Prices on each type or formulation of Protonix Oral and Protonix IV, Wyeth would have been required to pay substantially larger rebates to the State of Wyoming.

468. By retaining monies that were actually owed to the State of Wyoming under the MDRP, Wyeth retained money that was the property of the State of Wyoming and to which Wyeth was not entitled.

469. By virtue of this conduct, Wyeth is liable to the State of Wyoming and the State seeks disgorgement of the entire amount of improperly retained rebate payments that should have been paid to the State of Wyoming.

WHEREFORE, the State of Wyoming prays:

a. That judgment be entered in favor of the State of Wyoming and against Defendant, Wyeth.

b. On the State of Wyoming's Common Law Fraud claim, as outlined in Count 78; compensatory damages, punitive damages, such amounts to be determined at trial, plus the State of Wyoming's costs in this suit, including reasonable attorneys' fees.

c. On the State of Wyoming's Breach of Contract claim, as outlined in Count 79; impose damages in an amount equivalent to the loss sustained by the State of Wyoming Medicaid Program, plus prejudgment interest.

d. On the State of Wyoming's Unjust Enrichment claim, as outlined in Count 80; recovery in the amount of the State of Wyoming's payment for the false and inflated Best Prices on each type or formulation of Protonix Oral and Protonix IV, such amount to be determined at trial, plus the State of Wyoming's costs in this suit, including all reasonable attorney's fees.

e. On the State of Wyoming's Disgorgement claim, as outlined in Count 81; an amount equivalent to the loss sustained by the State of Wyoming, prejudgment interest and punitive damages.

f. For such other and further relief that the Court deems just and necessary.



Dated: May 7, 2010

Respectfully submitted,

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### **Local Rule 7.1 Certification**

The undersigned hereby certify pursuant to Local Rule 7.1 (a)(2), that as counsel from Kansas, Maine and Massachusetts, on behalf of the moving State governments, we have conferred in good faith with counsel for the Relators, the United States and the Defendant in an effort to narrow or resolve the issues raised in this motion. We understand that none of the Parties will oppose this Motion.

Dated: May 7, 2010

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**Certificate of Service**

I hereby certify that this Complaint in Intervention with any attachments filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: May 7, 2010

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